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U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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9 **ADELPHIA COMMUNICATIONS**
10 **CORPORATION**, aka Century Mendocino Cable
11 **TV dba Adelphia Cable Communications**

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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

JCS

C 07 2257
Case No.:

14 **SIFA TUIAKI and LUPE TUIAKI,**

15 **Plaintiffs,**

16 **v.**

17 **PACIFIC GAS & ELECTRIC COMPANY;**
18 **PAULEY CONSTRUCTION, INC.;**
19 **TRAFFIC SOLUTIONS, INC.; ADELPHIA**
20 **TELECOMMUNICATIONS CO., INC.;**
21 **SBC TELECOMMUNICATIONS, INC.;**
22 **MOBILE TOOL INTERNATIONAL, INC.,**
23 **dba TELSTA; COUNTY OF**
24 **MENDOCINO; STATE OF CALIFORNIA;**
25 **PACIFIC BELL TELEPHONE COMPANY;**
26 **PACIFIC TELESIS GROUP; SBC**
27 **OPERATIONS, INC.; and DOES 1 to 100,**

28 **Defendants.**

ADELPHIA COMMUNICATIONS
CORPORATION, aka CENTURY
MENDOCINO CABLE TV dba ADELPHIA
CABLE COMMUNICATIONS,

Cross-Complainant.

v.

PAULEY CONSTRUCTION, INC., and
ROES 1 to 50, INCLUSIVE,

Cross-Defendants.

NOTICE OF REMOVAL OF ACTION
PURSUANT TO 28 U.S.C. § 1452 AND 28
U.S.C. § 1334

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NOTICE OF REMOVAL

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1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 PLEASE TAKE NOTICE that defendant/cross-complainant ADELPHIA
3 COMMUNICATIONS CORPORATION, aka Century Mendocino Cable TV dba Adelphia Cable
4 Communications (hereinafter "ADELPHIA") hereby removes to this Court the state court action
5 described below.

6 1. On June 23, 2004 an action was commenced in the Superior Court of the State of
7 California in and for the County of San Francisco, entitled *Sifi Tuiaki, et al v. Adelphia*
8 *Communications Corporation and Century, et al*, Case Number CGC-04-432476. A copy of the
9 complaint is attached hereto as Exhibit "A."

10 2. On April 7, 2005 the case was consolidated with Case Numbers 04-429352 and 03-
11 419761 in the Superior Court of the State of California in and for the County of San Francisco.

12 3. On or about January 11, 2007, plaintiffs Sifi Tuiaki and Lupe Tuiaki settled their
13 causes of action with all defendants, including PAULEY and ADELPHIA. Thereby remaining action
14 is the cross-complaint by ADELPHIA against PAULEY.

15 4. On February 22, 2007, ADELPHIA filed its 1st Amended Cross-Complaint against,
16 *inter alia*, PAULEY CONSTRUCTION CORPORATION (hereinafter "PAULEY").

17 5. On March 26, 2007, PAULEY demurred to ADELPHIA's 1st Amended Cross-
18 Complaint, for the first time raising issues arising under the bankruptcy code, the ADELPHIA Chapter
19 11 Cases and the corresponding Confirmation Plan. Attached hereto as Exhibit "B" is a true and
20 correct copy of PAULEY's demurrer to ADELPHIA's 1st Amended Cross-Complaint.

21 6. On April 11, 2007 ADELPHIA filed its 2nd Amended Cross-Complaint based on
22 newly discovered evidence. Attached hereto as Exhibit "C" is a true and correct copy of
23 ADELPHIA's 2nd Amended Cross-Complaint.

24 7. Based on the filing of the subsequent pleading, PAULEY took the hearing to its
25 demurrer to ADELPHIA's 1st Amended Cross-Complaint off calender, and filed its demurrer to
26 ADELPHIA's 2nd Amended Cross-Complaint on April 17, 2007 raising issues substantially the same
27 as those raised in its demurrer to ADELPHIA's 1st Amended Cross-Complaint. Attached hereto as

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1 Exhibit "D" is a true and correct copy of PAULEY's demurrer to ADELPHIA's 2nd Amended Cross-
 2 Complaint.

3 8. On June 25, 2002, ADELPHIA filed a petition for bankruptcy in the United States
 4 Bankruptcy Court, Southern District of New York, Case Number 02-41729 (REG). On January 5,
 5 2007, Judge Robert E. Gerber entered an Order Confirming First Modified Fifth Amended Joint
 6 Chapter 11 Plan for Adelphia Communications Corporation and Certain of Its Affiliated Debtors
 7 (hereinafter the "Plan") docket number 12952. See ADELPHIA's request for judicial notice of the
 8 Order and Plan. The Plan stated the Bankruptcy Court "shall retain and shall have exclusive
 9 jurisdiction over any matter (a) arising under the Bankruptcy Code, (b) arising in or related to the
 10 Chapter 11 Cases or the Plan . . ."

11 9. 28 U.S.C. 1452 states "A party may remove any claim or cause of action in a civil
 12 action . . . to the district court for the district where such civil action is pending, if such district court
 13 has jurisdiction of such claim or cause of action under section 1334 of this title."

14 10. Federal Rule of Bankruptcy Procedure 9027(a) provides "A notice of removal shall be
 15 filed with the clerk for the district and division within which is located the state or federal court where
 16 the civil action is pending."

17 11. 28 U.S.C. 1334 provides in part that "(a) Except as provided in subsection (b) of this
 18 section, the district courts shall have original and exclusive jurisdiction of all cases under title 11."

19 12. PAULEY requested the Superior Court of San Francisco County take judicial notice
 20 the "Pleadings and documents filed in United States Bankruptcy court, Southern District of New York,
 21 *In Re Adelphia Communications Corporation, et al.*, Chapter 11 Cases, Case No. 02-41729 (REG)."
 22 Attached hereto as Exhibit "E" is a true and correct copy of PAULEY's Request for Judicial Notice
 23 Pursuant to its Demurrer.

24 13. PAULEY's memorandum in support of its demurrer, Exhibit "F", make broad
 25 assertions that the status of ADELPHIA's Bankruptcy served as a defense to PAULEY/ADELPIA
 26 contractual indemnity and named insured clauses. At the same time, PAULEY filed a proof of claim
 27 in the ADELPHIA Bankruptcy, submitting itself to the jurisdiction of the U.S. Bankruptcy Court,

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1 Southern District of New York. See 11 U.S.C. 106(b), see also *S.G. Phillips Construction, Inc. v. City*
2 *of Burlington*, 45 F.3d 702, 704-08 (2nd Cir. 1995).

3 WHEREFORE, ADELPHIA COMMUNICATIONS CORPORATION, aka Century
4 Mendocino Cable TV dba Adelphia Cable Communications files this Notice of Removal and seeks or
5 will seek transfer of this case to United States Bankruptcy Court, Southern District of New York, Case
6 Number 02-41729 (REG)

7 Date: April 25, 2007

8 **RYAN & LIFTER**
9 A Professional Corporation

10 By 
11 MICHAEL J. DALEY

12 Attorney for Defendant/Cross-Complainant
13 ADELPHIA COMMUNICATIONS
14 CORPORATION, aka Century Mendocino Cable
15 TV dba Adelphia Cable Communications
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